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10 ASSOCIATION and Defendant CLEAR RECON CORP.

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 SATICOY BAY, LLC SERIES 1702 EMPIRE
14 MINE,

15 Plaintiff,

16 vs.

17 FEDERAL NATIONAL MORTGAGE
18 ASSOCIATION; and CLEAR RECON
19 CORP.,

20 Defendants.

21 and

22 FEDERAL HOUSING FINANCE AGENCY,
23 as Conservator of the Federal National
24 Mortgage Association,

25 Intervenor.

26 FEDERAL NATIONAL MORTGAGE
27 ASSOCIATION,

28 Counterclaimant,

and

FEDERAL HOUSING FINANCE AGENCY,
as Conservator of the Federal National
Mortgage Association,

Intervenor,

Case No.: 2:14-cv-01975-GMN-NJK

OPPOSITION TO MOTION TO DISMISS

1 vs.

2 SATICOY BAY, LLC SERIES 1702 EMPIRE
3 MINE; BLUFFS COMMUNITY
ASSOCIATION a/k/a THE BLUFFS;

4 Counter-Defendants.
5

6 COMES NOW Defendant/Counterclaimant, Federal National Mortgage Association
7 (“Fannie Mae”), by and through its counsel of record, and hereby files its opposition to Counter-
8 Defendant, BLUFFS COMMUNITY ASSOCIATION a/k/a THE BLUFFS (the “Bluffs”),
9 Motion to Dismiss.¹ This Opposition is based on the pleadings and papers on file with the Court,
10 the following Memorandum of Points and Authorities and any oral argument permitted.

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 I. INTRODUCTION

13 The Bluffs attempts to hide behind a state statute intended to encourage homeowners and
14 homeowners’ associations (“HOAs”) to resolve assessment disputes through alternative dispute
15 resolution. In doing so, the Bluffs misapplies when the statute is triggered and oversimplifies the
16 case law interpreting it. Indeed, the Bluffs ignores that in *McKnight Family, L.L.P. v. Adept*
17 *Management*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 557 (2013), the Nevada Supreme Court ruled
18 that some, but not all, claims against a homeowner’s association are subject to mandatory
19 arbitration. Specifically, the arbitration requirement established in Nevada Revised Statute
20 (“N.R.S.”) § 38.310 does not apply when the dispute (1) is not based on an interpretation,
21 application, or enforcement of an HOA’s covenants, conditions, and restrictions (“CC&Rs”) or
22 (2) involves title to real property. Further, Courts in this District have held that N.R.S. § 38.310
23 does not apply to claims requiring interpretation of N.R.S. § 116.3116. *See My Global Village v.*
24 *Federal National Mortgage Association*, No. 2:15-cv-00211-RCJ-NJK, slip op. at 3 (D. Nev.
25 Apr. 30, 2015) (holding that a counterclaim asserting violations of N.R.S. § 116.31164 does not
26

27 ¹ The Bluffs’ motion is titled “Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint.”
28 However, in substance, the motion seeks dismissal of Fannie Mae’s Answer to Amended
Complaint and Counterclaim on April 24, 2015. [Dkt. 85.]

1 require interpretation of an HOA's CC&Rs and thus is not subject to N.R.S. § 38.310), attached
2 hereto as Exhibit "A".

3 The Bluffs acknowledges that Fannie Mae seeks to determine title to real property;
4 however, the Bluffs fails to appreciate that Fannie Mae's claims are not based on the
5 interpretation or enforcement of CC&Rs or the homeowners' association's governing
6 documents, but rather are based on the Bluffs' failure to abide by the statutorily prescribed
7 procedure for conducting a foreclosure sale. Ultimately, Fannie Mae seeks to set aside the
8 Bluffs' foreclosure sale based on the Bluffs' and/or its agent's failure to abide by the statutory
9 foreclosure requirements. The Bluffs has not established that Fannie Mae fails plausibly to state
10 its claims and therefore, its motion to dismiss should be denied in its entirety.

11 **II. STATEMENT OF FACTS²**

12 **A. FANNIE MAE'S INTEREST IN THE SUBJECT PROPERTY**

13 Fannie Mae is the owner of a promissory note ("Note"), which is secured by a first
14 priority deed of trust ("Deed of Trust") encumbering real property located 1702 Empire Mine
15 Drive, Henderson, Nevada 89014 ("Subject Property"). (Amended Counterclaim ¶¶ 7, 9, Ex. 1.)
16 Marshall L. Roush ("Roush") is the former owner of the Subject Property. (*See id.* ¶ 8.) To
17 purchase the Subject Property, Roush borrowed \$149,800.00 from Cendant Mortgage
18 Corporation (the "Roush Loan"). (*Id.* ¶ 8, Ex. 1.) As part of that loan transaction, Roush
19 executed the Note and Deed of Trust encumbering the Subject Property. (*Id.*) The Deed of Trust
20 was recorded on January 26, 2005, in the Official Records of Clark County, Nevada as
21 Instrument No. 200501260003768. (*Id.* ¶ 10, Ex. 1.)

22 Fannie Mae purchased the Roush Loan from PHH Mortgage Corporation (previously
23 known as Cendant Mortgage Corporation) on or about October 28, 2004 and ultimately became
24 the beneficiary of the Deed of Trust. (*See id.* ¶¶ 9-14, Ex. 2-5.)

25
26
27 ² The facts are taken from Fannie Mae's Amended Counterclaim, which facts are assumed to be
28 true for purposes of the motion to dismiss. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 589 (2007).

B. THE HOA FORECLOSURE SALE

The Subject Property is within the Bluffs, which charges monthly assessments to each unit within the association. (*See id.* ¶¶ 15-18.) At some point after purchasing the Subject Property, Roush stopped paying the regular monthly assessments for common expenses, and the Bluffs retained Nevada Association Services (“NAS”) to collect the delinquent assessments. (*Id.*) To do so, NAS, acting on behalf of the Bluffs, recorded a Notice of Delinquent Assessment (Lien) (“HOA Lien”) on the Subject Property. (*Id.* ¶¶ 18, Ex. 6.)

The HOA Lien stated that the total amount due was \$1,472.05. (*Id.* ¶ 16, Ex. 6.) The HOA Lien states this amount includes “late fees, collection fees and interest” (*Id.*) Thereafter, NAS, acting on behalf of the Bluffs, recorded a Notice of Default and Election to Sell Under Homeowner’s Association Lien (“Notice of Default”). (*Id.* ¶ 19, Ex. 7.) Roush did not pay off the amount claimed by the Bluffs and, as a result, the Bluffs, through its agent NAS, recorded a Notice of Foreclosure Sale which claimed that the total amount due had increased to \$5,130.24. (*Id.* ¶ 22, Ex. 8.)

Less than one month later, the Bluffs, through its agent NAS, proceeded to foreclosure. (*Id.* ¶ 29.) On or about August 29, 2014, the Subject Property was purportedly sold (“HOA Sale”) to Plaintiff/Counter-Defendant Saticoy Bay LLC Series 1702 Empire Mine (“Saticoy Bay”). (*Id.* ¶¶ 29-31, Ex. 9.) Following the HOA Sale, the Bluffs’ agent recorded a Foreclosure Deed which claimed Saticoy Bay was the highest bidder at the HOA Sale with a bid of \$21,500.00, but that the taxable value of the property was \$83,569.00. (*See id.* ¶¶ 29-32, Ex. 9.)

Fannie Mae alleges that the Bluffs and/or its agent, NAS, failed to comply with the statutory requirements for a nonjudicial foreclosure of a homeowner’s association lien set forth in N.R.S. Chapter 116. (*Id.* ¶ 38.) Indeed, the purported sale was not held in a commercially reasonable manner and the Bluffs and/or its agent failed to provide a legally sufficient HOA Lien, Notice of Default and Notice of Sale to Fannie Mae and/or its predecessors in interest as required by N.R.S. § 107.090 and Chapter 116. (*Id.* ¶¶ 45-62.) Fannie Mae alleges in its Amended Counterclaim that Saticoy Bay is not a bona fide purchaser and the HOA Sale was invalid as to Fannie Mae and has no effect on Fannie Mae’s prior recorded first priority Deed of

1 Trust, which continues to encumber the Subject Property. (*Id.* ¶¶ 59, 61, 79-84.) Fannie Mae
 2 claims the Bluffs' foreclosure sale and purported transfer of the Subject Property free and clear
 3 of Fannie Mae's Deed of Trust is void. (*Id.* ¶¶ 59, 79-84.)

4 **C. PROCEDURAL HISTORY**

5 Saticoy Bay initiated the current action on or about October 14, 2014, in the Eighth
 6 Judicial District Court for the State of Nevada. In its complaint, Saticoy Bay alleged two causes
 7 of action, each seeking a declaration that Saticoy Bay owns the Subject Property free and clear of
 8 any other interests, including Fannie Mae's Deed of Trust.

9 Fannie Mae and Defendant Clear Recon Corp. removed the action to this Court on
 10 November 26, 2014. [Dkt. 1.] On December 2, 2014, Fannie Mae filed its Answer to Complaint
 11 and Counterclaim. [Dkt. 1.] On December 10, 2014, the Court entered an Order permitting
 12 Federal Housing Finance Agency ("FHFA") to intervene in the action. [Dkt. 16.] On December
 13 11, 2014, Fannie Mae and FHFA filed a Motion for Summary Judgment.³ [Dkt. 17.]

14 Thereafter, on December 23, 2014, Fannie Mae filed its Amended Answer and Amended
 15 Counterclaim ("Amended Counterclaim") alleging causes of action against not only Saticoy Bay,
 16 but also the Bluffs and NAS⁴. [Dkt. 23.] The causes of action alleged against the Bluffs are: (1)
 17 Wrongful Foreclosure, (2) Quiet Title, (3) Declaratory Relief, (4) Slander of Title and (5) Unjust
 18 Enrichment. In its Amended Counterclaim, Fannie Mae sought an order quieting title and a
 19 declaration that the HOA Sale was void as to Fannie Mae and that its first priority Deed of Trust
 20 continues to encumber the Subject Property. (*See* Amended Counterclaim at Prayer.)

21 Saticoy thereafter filed a Motion to Amend Complaint on March 25, 2015. [Dkt. 73.] On
 22 April 7, 2015, the Court entered an Order granting the Motion to Amend Complaint. [Dkt. 75.]
 23 Saticoy then filed its Amended Complaint on April 7, 2015. [Dkt. 77.] In response, Fannie Mae
 24 filed an Answer to Amended Complaint and Counterclaim on April 24, 2015, containing

25 _____
 26 ³ Saticoy Bay filed an Opposition to the Motion for Summary Judgment on February 2, 2015.
 [Dkt. 54, 55.] Fannie Mae and FHFA's filed their Reply on March 5, 2015. [See Dkt. 69.]

27 ⁴ Fannie Mae dismissed its claims against NAS without prejudice via stipulation and an Order
 28 dismissing NAS was entered on January 16, 2015. [Dkt. 44.]

1 identical allegations and counterclaims as those set forth in the December 23, 2014, Amended
 2 Answer and Amended Counterclaim. [Dkt. 85.] Saticoy filed an Answer to Amended
 3 Counterclaim on May 15, 2015. [Dkt. 94.] The Bluff filed its Motion to Dismiss on May 15,
 4 2015.⁵ [Dkt. 95.]

5 **III. LEGAL STANDARD**

6 Under Federal Rule of Civil Procedure 8(a)(2), a pleading need not contain “detailed
 7 factual allegations,” but must only contain a “short and plain statement of the claim showing that
 8 the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). “To survive a
 9 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a
 10 claim to relief that is plausible on its face.” *Id.* at 678 (citation omitted). “[F]or the purposes of
 11 a motion to dismiss [the court] must take all of the factual allegations in the complaint as true.
 12 *Id.* Indeed, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual
 13 proof of those facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Bell Atl.*
 14 *Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

15 **IV. ARGUMENT⁶**

16 **A. THE ARBITRATION REQUIREMENT IN N.R.S. § 38.310 DOES NOT APPLY TO FANNIE** 17 **MAE’S COUNTERCLAIMS, WHICH RELATE SOLELY TO THE INTERPRETATION OF** **STATUTE.**

18 The Bluffs argues that Fannie Mae’s claims are barred by N.R.S. § 38.310. (*See* Motion
 19 to Dismiss at 3-6.) However, the provisions of section 38.310 are not triggered simply because a
 20 party has alleged causes of action against a homeowners’ association. *See* N.R.S. § 38.310; *see*
 21 *also McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev. Adv. Op. __, __, 310 P.3d 555, 557
 22 (2013). Instead, the statute only applies to a “civil action based upon a claim relating to... (a)
 23 [t]he interpretation, application or enforcement of any covenants, conditions or restrictions

24 ⁵ The Bluffs previously filed a Motion to Dismiss on January 19, 2015. [Dkt. 53.] Following the
 25 filing of Fannie Mae’s Answer to Amended Complaint and Counterclaim, and the filing of the
 26 instant Motion to Dismiss, the January 19, 2015, Motion to Dismiss was denied as moot. [Dkt.
 97.]

27 ⁶ The Bluffs argues it is not a proper party to Fannie Mae’s quiet title claim because it does not
 28 claim any ownership interest in the Subject Property. (Motion to Dismiss at 3.) Based on this
 representation, Fannie Mae agrees to dismissal of its quiet title claim against to the Bluffs,
 without prejudice.

1 applicable to residential property or any bylaws, rules or regulations adopted by an association . .
2 . .” NRS § 38.310. Thus, before the arbitration requirement applies to an action, the action must
3 be: (1) a civil action; and (2) related to the interpretation, application, or enforcement of any
4 CC&Rs or the rules and regulations of the HOA. *Id.*; *see also Hamm v. Arrowcreek*
5 *Homeowners’ Ass’n*, 124 Nev. 290, 295, 183 P.3d 895, 899-900 (2008). Conversely, when an
6 association’s CC&Rs, bylaws, rules or regulations are not at issue (as here), a plaintiff is not
7 required to submit its claims to mediation or arbitration prior to filing an action in district court.
8 *See My Global Village v. Federal National Mortgage Association*, No. 2:15-cv-00211-RCJ-NJK,
9 slip op. at 3 (D. Nev. Apr. 30, 2015); *Calvert v. Alessi & Koenig, LLC*, No. 2:11-cv-00333-LRH-
10 PAL, 2013 WL 592906, *6 (D. Nev. Feb. 12, 2013).

11 In this case, none of Fannie Mae’s claims require this Court to interpret or apply any of
12 the Bluffs’ CC&Rs or governing documents. Instead, each claim seeks an interpretation of
13 N.R.S. Chapter 116 and a determination that the Bluffs failed to comply with the statutory
14 foreclosure requirements. The claims against the Bluffs have nothing to do with the amount of
15 assessments charged pursuant to the Bluffs’ CC&Rs; instead the claims challenge the improper
16 methods used by the Bluffs to collect those assessments through foreclosure. Fannie Mae’s
17 challenge to the *manner* in which the Bluffs foreclosed is not subject to N.R.S. § 38.310. *See My*
18 *Global Village*, No. 2:15-cv-00211-RCJ-NJK, at *3; *Calvert*, 2013 WL 592906, at *6.

19 In *My Global Village*, counterclaimant Federal National Mortgage Association asserted
20 claims for declaratory relief, quiet title and, in the alternative, unjust enrichment alleging that the
21 HOA Sale did not extinguish Fannie Mae’s deed of trust and that the HOA and HOA trustee
22 violated N.R.S. § 116.31164 as they failed to distribute excess proceeds following the HOA
23 foreclosure sale. *Id.* at *2. The Court noted that the case did not concern “the procedures for
24 adjusting assessments upon residential realty.” *Id.* It further noted that the case involved whether
25 “federal law limits the operation of NRS section 116.3116” and “does not require the
26 interpretation, application, or enforcement of any CC&R.” *Id.* Thus, each of the claims,
27 including the unjust enrichment allegations, like the ones here, did not require interpretation of
28 CC&Rs and were thus not barred by N.R.S. § 38.310. *Id.* at *3. Similarly, in this case, the court

1 should not dismiss Fannie Mae's counterclaims, each of which involve interpretation and
2 application of federal law and/or NRS Chapter 116 – not “the interpretation, application or
3 enforcement of any CC&R” or the “procedures for adjusting assessments upon residential
4 realty.”

5 In *Calvert*, the plaintiff homeowner sued Alessi & Koenig, LLC (“AK”), a company
6 hired by plaintiff's HOA to collect past due assessments from plaintiff. *Id.* at *1. AK sent
7 plaintiff multiple letters attempting to collect the past due assessments which threatened “the
8 initiation of foreclosure proceedings” and did not identify AK as a debt collector. *Id.* Plaintiff
9 sued AK alleging the collection letters violated the Fair Debt Collection Practices Act
10 (“FDCPA”). In defense, AK argued (as the Bluffs argues here) that plaintiff's claims were
11 barred by N.R.S. section 38.310 for failure to first pursue mandatory mediation or arbitration.
12 *Id.* at *6. The court rejected AK's argument and noted the dispute was not about “about the
13 increase, decrease or imposition of additional assessments.” *Id.* Instead, the dispute involved
14 AK's “practices used to collect *undisputed* assessments.” *Id.* (emphasis in original). Because
15 the court was not required to interpret the HOA's CC&Rs to determine if AK's collection
16 practices violated the FDCPA, the *Calvert* court held that NRS section 38.310 was inapplicable
17 to the plaintiff's claims. *Id.*; see also *Karimova v. Alessi & Koenig, LLC*, No. 1:13-CV-151-
18 JCM-CWH, 2013 WL 3678091, *2 (D. Nev. July 11, 2013) (recognizing the holding in *Calvert*
19 that mediation or arbitration under N.R.S. § 38.310 was not required “because the assessment
20 amounts were undisputed.”).

21 To support its motion, the Bluffs relies on two cases, *McKnight*, 310 P.3d 555 and
22 *Hamm*, 183 P.3d 895 (2008). Both cases fail to support the Bluffs' argument.

23 In *Hamm*, property owners challenged their HOA's right to... assess dues against their lot
24 and sought a release of the lien. The plaintiffs alleged they sought “court intervention to
25 interpret the language” of the homeowner's association's CC&Rs. *Hamm*, 183 P.3d at 296. The
26 court recognized that to adjudicate the plaintiffs' claims, it would be required to examine the
27 association's CC&Rs to determine if the assessment was proper. *Id.* Thus, the plaintiffs' claims
28 were dismissed for failure to first arbitrate in compliance with N.R.S. § 38.310. Unlike in

1 *Hamm*, Fannie Mae does not challenge the dues assessed, nor does it claim the HOA Lien should
2 be released. Instead, Fannie Mae claims that the Bluffs and its agent failed to comply with
3 N.R.S. Chapter 116 in enforcing the HOA Lien. This requires no application or interpretation of
4 the CC&Rs or the governing documents; it only requires interpretation of N.R.S. § 116.3116 *et*
5 *seq.* and its application to the actions of the Bluffs and its agent.

6 In *McKnight*, the plaintiff disputed allegedly unpaid assessments to an HOA. *McKnight*,
7 310 P.3d at 557. The plaintiff property owner brought claims against its HOA for injunctive
8 relief, negligence, breach of contract, violation of N.A.C. §§ 116.300 and 116.341, violation of
9 N.R.S. §§ 116.1113 and 116.3103, slander of title, wrongful foreclosure and quiet title. *Id.* On
10 appeal, the Nevada Supreme Court affirmed the dismissal of the majority of the plaintiff's
11 claims, holding that they were based on a dispute concerning whether payments made to the
12 HOA were proper under the HOA's governing documents. *Id.* at 558-59. The court did *not*
13 dismiss the plaintiff's quiet title claim or his motion to set aside the foreclosure, which were
14 claims related to title. *Id.* at 559. In holding that the plaintiff's wrongful foreclosure claim was
15 subject to the arbitration requirements of NRS § 38.310, the court determined that this claim
16 involved the interpretation of the homeowner's association's CC&Rs because it challenged
17 whether there was a default and whether the HOA had authority to initiate a foreclosure. *Id.*
18 However, if the party challenges the foreclosure act itself, the same review is not required, and
19 the claim is not subject to N.R.S. § 38.310. *Id.*

20 Courts in this District have similarly held that claims challenging the actions of an HOA
21 not involving its governing document need not be submitted to mediation or arbitration prior to
22 filing a claim. *See Gray v. Account Recovery Solutions*, No. 2:13-CV-887 JCM GWF, 2014 WL
23 347576, at *1 (D. Nev. Jan. 30, 2014) (holding claims related to violations of the Fair Debt
24 Collection Practices Act were not subject to N.R.S. § 38.310's arbitration requirement because
25 "plaintiff puts forward no dispute regarding the amount that defendant sought to collect, and
26 instead argues that defendant's debt collection practice violated the FDCPA."); *Calvert*, 2013
27 WL 592906 at *6.

28 While at first blush the names of Fannie Mae's counterclaims match the names of the

1 claims dismissed in *McKnight*, the basis for Fannie Mae's claims and the relief sought are
2 materially different from those at issue in *McKnight*. Here, Fannie Mae does not challenge the
3 Bluffs' assessments nor the Bluffs' authority to place a lien on the Subject Property. Instead,
4 Fannie Mae claims the *manner* in which the Bluffs completed its foreclosure sale was invalid by
5 reference to the governing state statutory standard. In its wrongful foreclosure claim, Fannie
6 Mae alleges the Bluffs did "not provide legally sufficient notice of the Bluffs' [] foreclosure
7 proceedings on the Subject Property" and that the Bluffs and its agent "failed to comply with the
8 statutory requirements for a non-judicial foreclosure of a homeowner's association lien set forth
9 in [NRS] Chapter 116." (Amended Counterclaim ¶¶ 37-38.) Fannie Mae further claims that the
10 HOA Lien and foreclosure notices improperly included costs of collection in violation of N.R.S.
11 § 116.31162. It is not the amount of the collection costs or the ability of the Bluffs to seek
12 collection costs from its homeowner pursuant to the CC&Rs that Fannie challenges. Instead,
13 Fannie Mae challenges whether collection costs can be included in the lien pursuant to statute
14 (they cannot) and whether the Bluffs provided proper notice of the foreclosure pursuant to the
15 statute (it did not).

16 The same is true of Fannie Mae's claims for declaratory relief, slander of title, and unjust
17 enrichment. Fannie Mae alleges the Bluffs "failed to comply with the statutory requirements for
18 a non-judicial foreclosure of a homeowner's association lien set forth in N.R.S. Chapter 116."
19 (Amended Counterclaim ¶ 69.) Fannie Mae also alleges the sale was not held in a commercially
20 reasonable manner and that the foreclosure notices were not legally sufficient. (*Id.* ¶¶ 70-71.)
21 None of these allegations require an interpretation of the CC&Rs and instead only require
22 statutory interpretation. Similarly, in its declaratory relief claim, Fannie Mae seeks a declaration
23 that the HOA Sale was void as to Fannie Mae based on the failure to comply with Chapter 116 in
24 conducting the sale. (*Id.* ¶¶ 77-84.) With regard to its slander of title claim, Fannie Mae alleges
25 title did not transfer because "the HOA Sale did not satisfy the requirement of NRS Chapter
26 116." (*Id.* ¶ 87.) Finally, with regard to unjust enrichment, Fannie Mae alleges the Bluffs
27 improperly retained amounts it received from the foreclosure sale (*Id.* ¶ 99-100.)

28 The Bluffs does not, because it cannot, identify a single reference to a CC&R or

governing document in Fannie Mae's Counterclaim. That is because at the root of each of Fannie Mae's claims is the contention that the foreclosure act itself was not conducted in accordance with the requirements of N.R.S. Chapter 116. This Court need not review any CC&Rs to determine whether the Bluffs or its agent satisfied those statutory requirements. Thus, the arbitration requirements of N.R.S. § 38.310 do not apply to Fannie Mae's Counterclaim.

B. FANNIE MAE'S CLAIMS RELATE TO TITLE AND ARE NOT SUBJECT TO NRS 38.310

Fannie Mae's claims are also not subject to N.R.S. § 38.310 because they relate to title. This is confirmed both by the statute and the Nevada Supreme Court's decision in *McKnight*. "Civil action" as used in N.R.S. § 38.310 "does not include... an action relating to the title of residential property." N.R.S. § 38.300; *McKnight*, 310 P.3d at 559. When claims require a court to determine who holds superior title to a parcel of land, the claim is exempt from N.R.S. § 38.310. *See McKnight*, 310 P.3d at 559. Accordingly, N.R.S. § 38.310 does not divest a court of its jurisdiction to determine who has superior title to real property and, if necessary, set aside a foreclosure sale. *Id.*

Fannie Mae's claims are akin to the quiet title claim that *McKnight* held was not subject to N.R.S. § 38.310 because they concern title to the Subject Property. *See id.* Through its wrongful foreclosure claim, Fannie Mae seeks "an order that the HOA Sale was void as to Fannie Mae and that Fannie Mae's first priority Deed of Trust continues to encumber the Subject Property." (Amended Counterclaim at 16.) Similarly, in its claim for declaratory relief, Fannie Mae is seeking "a declaration that the HOA Sale . . . did not affect or extinguish Fannie Mae's rights, status, legal relations and interest in the subject Property. (*Id.* at 17.) Accordingly, for this additional reason, the claims do not constitute a "civil action" as defined in N.R.S. § 38.310.

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V. CONCLUSION

For the foregoing reasons, Fannie Mae respectfully requests that this Court deny the Bluffs' Motion to Dismiss Fannie Mae's wrongful foreclosure, declaratory relief, slander of title and unjust enrichment claims. Fannie Mae agrees to dismissal of its quiet title claim against the Bluffs, without prejudice, based on the Bluffs' representation that it does not claim any ownership interest in the Subject Property.

DATED this 1st day of June 2015.

ALDRIDGE PITE, LLP

/s/ Krista J. Nielson
LAUREL I. HANDLEY
KRISTA J. NIELSON
*Attorneys for Defendant/Counter-
claimant FEDERAL NATIONAL
MORTGAGE ASSOCIATION and
Defendant CLEAR RECON CORP.*

CERTIFICATE OF SERVICE

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 520 South Fourth Street, Suite 360, Las Vegas, Nevada 89101.

I hereby certify that on June 1, 2015, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of June, 2015, at Las Vegas, Nevada.


NATASHA D. PETTY

EXHIBIT “A”

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MY GLOBAL VILLAGE, LLC,

Plaintiff,

vs.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION et al.,

Defendants.

Case No.: 2:15-cv-00211-RCJ-NJK

ORDER

This case arises out of a homeowner's association foreclosure sale. Pending before the Court is a Motion to Dismiss (ECF No. 17). For the reasons given herein, the Court denies the motion.

I. FACTS AND PROCEDURAL HISTORY

In 2003, non-party Carl D. Carlos purchased real property at 7709 Wedlock Lane, Las Vegas, Nevada 89129 (the "Property"), giving non-party SunTrust Mortgage, Inc. a promissory note in the amount of \$181,600, secured by a first deed of trust (the "DOT") against the Property. (See Answer & Countercl. ¶ 10, ECF No. 5). Defendant Federal National Mortgage Association ("Fannie Mae") purchased the promissory note on March 1, 2003 and obtained a separate assignment of the DOT on October 13, 2013, (*id.* ¶¶ 12, 14), although the DOT presumably followed the note to Fannie Mae on March 1, 2003 as a matter of law, *see Edelstein v. Bank of*

N.Y. Mellon, 286 P.3d 249, 257 (Nev. 2012). The Federal Housing Finance Agency (“FHFA”) placed Fannie Mae into conservatorship on September 6, 2008. (Answer & Countercl. ¶ 13). On December 5, 2014, Counterdefendant Mountain Shadow Homeowner’s Association, Inc. (the “HOA”) sold the Property to Plaintiff My Global Village, LLC at an HOA sale for \$138,000, although the fair market value of the Property was over \$250,000. (*Id.* ¶¶ 30, 33, 36).

My Global Village sued Fannie Mae and trustee/auctioneer Nevada Association Services, Inc. (“NAS”) in state court to quiet title to the Property, for a declaration that the HOA sale extinguished the DOT, for an injunction against Fannie Mae foreclosing under the DOT, and for breach of contract and indemnification against NAS. Fannie Mae removed. NAS has not appeared. Fannie Mae answered and has counterclaimed against Plaintiff and the HOA for declaratory relief that the HOA foreclosure cannot under federal law have extinguished its interest in the DOT, to quiet title to the Property, and, in the alternative, for unjust enrichment. The FHFA intervened as a Defendant, answered, and counterclaimed against Plaintiff, the HOA, and NAS against Plaintiff and the HOA for declaratory relief that the HOA foreclosure cannot under federal law have extinguished its interest in the DOT and to quiet title to the Property. The HOA has asked the Court to dismiss Fannie Mae’s counterclaims.

II. DISCUSSION

The HOA argues that the Court has no subject matter jurisdiction over the case, citing Nevada Revised Statutes (“NRS”) section 38.310, which reads in full:

No civil action based upon a claim relating to:

- (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or
- (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property,

may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

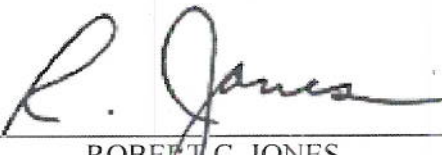
Nev. Rev. Stat. § 38.310. The Court denies the motion. The present case does not require the interpretation, application, or enforcement of any CC&R. Nor does it concern the procedures for adjusting assessments upon residential realty. The case concerns rather whether federal law limits the operation of NRS section 116.3116.

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 17) is DENIED.

IT IS SO ORDERED.

Dated this 30th day of April, 2015.



ROBERT C. JONES
United States District Judge